

# PROCLAMATION

BY THE

## Governor of the State of Texas

NO. 41-192

REPRODUCED FROM THE  
HOLDINGS OF THE  
TEXAS STATE ARCHIVES

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I am vetoing and filing with the Secretary of State House Bill No. 290, passed by the recently adjourned Regular Session of the Forty-ninth Legislature.

House Bill No. 290 amends the present law relating to the transportation of pupils to and from the public schools. The Amendment provides for the transportation of pupils to and from parochial, denominational or private schools.

Another Amendment reduces the minimum age of the driver of the school bus from twenty-one years to seventeen years. At the same time, the bill preserves the requirement in the present law that the driver shall be required to give bond for not less than Two Thousand Dollars.

The first Amendment violates the concept of complete separation of church and State and civil affairs, and violates the spirit and mandate of our Constitution.

Article 1, Section 7 of the Constitution reads as follows:

"No money shall be appropriated or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes."

Article 7, Section 5 reads in part as follows:

". . . and no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same or any part thereof ever be appropriated to or used for the support of any sectarian school; . . . ."

The Supreme Court of Texas in the case of *Jernigan v. Finley*, 90 Tex. 205, in construing Article 7, Section 5, stated: "The Legislature cannot do by indirection what it cannot do directly."

The Attorney General of Texas in Opinion No. O-4220 under date of December 6, 1941, reviews the authorities and the opinions of the Supreme Courts of several other States construing provisions in their Constitutions similar to ours. The opinion concludes as follows:

"In view of Article 1, Section 7, and Article 7, Section 5, of the Constitution of Texas, and the authorities cited and discussed in this opinion, you are respectfully advised that it is the opinion of this department that the pupils of a parochial school may not be transported to their school on a public school bus."

The wisdom of the constitutional provision above referred to is apparent. If the Legislature could authorize the trustees of school districts to negotiate for the transportation of pupils to a denominational or private school in one instance, they could do it for all the denominational and private schools in Texas. A business college in the city could negotiate for the transportation of pupils from the rural sections in the country to the city for the purpose of attending the business college. Pupils in areas adjacent to all our denominational schools could be afforded the opportunity to ride the school buses. The authority conferred by the proposed change in our present law might make common carriers out of our public school buses. The practice might never be developed to such an extent, but the illustration serves to call attention to the principles involved. The constitutional provisions are against the development of any such policy. It might be in aid of or in furtherance of a most laudable purpose, but the Constitution prohibits its assistance.

House Bill No. 290 reached my office less than ten days before the end of the Regular Session of the Forty-ninth Legislature. In accordance with the Constitution, it is being filed with the Secretary of State together with this proclamation containing my objections to the bill.



IN TESTIMONY WHEREOF I have  
hereunto signed my name of-  
ficially and caused the Seal  
of State to be affixed hereto  
at Austin, this the twenty-  
third day of June, A. D.,  
1945.

  
GOVERNOR OF TEXAS

BY THE GOVERNOR:

  
SECRETARY OF STATE